

MASS, MA 10. 2: Ac 81



GOVERNMENT DOCUMENT
COLLECTION

SEP 26 1990

University of Massachusetts
Library Copy

AN ACT RELATIVE TO CORPORATE TAKEOVER

INTERPRETATIONS-POLICIES-GUIDELINES

MASSACHUSETTS DEPARTMENT OF LABOR AND INDUSTRIES



PUBLICATION #16,223-15-300-3-90-C.R.
APPROVED BY: RIC MURPHY, PURCHASING AGENT

102/70

Table of Contents

Summary of Section 20E of Chapter 149 Assumption of Collective Bargaining Agreements in the Event of Business Combination Transactions	1
Summary of Section 183 of Chapter 149 Severance Pay in the Event of Termination Resulting from a Transfer of Corporate Control	3

POLICY STATEMENTS M.G.L. Chapter 149, Section 183

I. Satisfactory Notice	6
A. Notice To Employees	
B. Notice To Collective Bargaining Representative	
C. Notice To The Department of Labor and Industries	
II. Effective Date	8
III. Eligible Employees	8
IV. Collective Bargaining Agreements	10
V. Severance Benefit Amount	11



Digitized by the Internet Archive
in 2014

<https://archive.org/details/actrelativetocor00mass>



OFFICE OF THE COMMISSIONER
JAMES F. SNOW
(617) 727-3454

The Commonwealth of Massachusetts
Executive Office of Labor
Department of Labor and Industries
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston, 02202

SUMMARY OF SECTION 20E OF CHAPTER 149

Assumption of Collective Bargaining Agreements
in the Event of Business Combination Transactions

Section 20E creates a new form of nonpayment of wages under Chapter 149.

In the event of a business combination transaction, a new owner must assume a collective bargaining agreement for the Massachusetts employees covered by the contract until the contract termination date or until the parties agree to change the agreement. This protects Massachusetts employees who have labor contracts by mandating the assumption of a collective bargaining contract by a new owner.

Assumption of a contract is mandatory in "business combination transactions" which are defined as "any merger or consolidation, sale, lease, exchange or other disposition, in one transaction or a series of transactions, whether of all or substantially all the property and assets, including its good will, of the business operations".

Employment in Massachusetts is found if an individual's entire service, performed within and without the Commonwealth, is localized in the

Commonwealth; or, if the service is not localized in any state but some of the service is performed in the Commonwealth and the individual's base of operations is in Massachusetts, or directed by or controlled from the Commonwealth, or if the individual's residence is in Massachusetts.

Violation of the agreement which causes an employee to fail to receive wages, benefits, or wage supplements makes available to the aggrieved employee remedies under the provisions of section 148 - 150, inclusive, of Chapter 149 as well as private civil remedies.

The Department of Labor and Industries will take action to enforce the provisions of this section including, but not limited to, injunctions, cease and desist orders, and penalties provided for in section 148-150.

Recovery is against the new owner.

SUMMARY OF SECTION 183 OF CHAPTER 149

Severance Pay in the Event of Termination Resulting
from a Transfer of Corporate Control

Section 183 gives employees terminated as a result of a corporate transfer of control the right to severance pay. Eligible employees can receive severance pay for terminations which occur within 12 months before the takeover and 24 months after the takeover.

Eligibility begins when 50% ownership of stock of a covered corporation is transferred. That date is considered the date of the control transfer. Eligible employees have a right to severance coverage for a period of 2 years from that date. Employees whose employment is terminated before the date of transfer of control are also eligible if they are terminated on or after the date when the new owner (control transferee) acquired 5% of corporate stock or one year prior to the date of transfer of 50% control, whichever is more recent.

Section 183 applies to takeovers of companies with 50 Massachusetts employees or more or employees who work hours equivalent of 50 full time employees.

The law applies to employees of companies which are one of the following: domestic corporation (c. 156B, s. 3), gas or electric company or trust, savings bank, cooperative bank, national bank, federal savings bank, and

foreign corporation, who have employed 50 or more employees in the Commonwealth at some point in the 12 months prior to the transfer of control.

An employee is not covered if:

- a. the employee is covered by a contract providing for severance pay in excess of that provided for by the law; in this case, the higher contractual standard must be met;
- b. the employee has been employed by the prior owner (control transferor) for less than 3 years at the time of the 50% transfer; or
- c. the transfer of the corporation is to the prior owner's spouse, sibling or sibling's spouse, or lineal descendants or their spouses.

The law requires the new owner to pay severance pay to eligible employees at the rate of two weeks per year employed. The severance payment is calculated on the employee's base compensation during the last payroll period before termination.

For those whose employment terminated prior to the transfer of control, weekly compensation is calculated on the employee's base compensation

during the last payroll period before employment ended.

Payment of the lump sum severance must be made in addition to any final wages due and shall be made within one regular pay period after the employees last day of work.

If a covered employer fails to pay an eligible employee a severance payment, an employee may file a complaint and the department shall take action necessary to ensure that the employee is paid, including criminal prosecution. An employee may also pursue civil remedies. Failure to pay this severance constitutes nonpayment of wages.

The law also requires the new owner to notify eligible employees and the collective bargaining representative of rights under this law within 30 days of the completion of the transfer of control. The new owner must also notify the Department of Labor and Industries within this 30 day period. DLI will assess a fine of up to \$1000.00 for failure to provide such notice.

M.G.L. CHAPTER 149, SECTION 183

POLICY GUIDELINES

I. SATISFACTORY NOTICE

1. Upon assuming corporate control as defined in Chapter 149, Section 183, (acquisition of 50% controlling shares of a corporation), the new owner (control transferee) shall be responsible for providing written notice to employees of the acquired company, to collective bargaining representative(s) of the employees, and to the Massachusetts Department of Labor and Industries.

A. NOTICE TO EMPLOYEES:

i) TIME: Notice of employee rights under this section shall be provided to each employee in writing within 30 days of the date of transfer of control. In addition, notice will be sent to any employee terminated during the 12 months prior to the transfer of 50% control, or after the control transferee acquired 5%, whichever is applicable.

ii) FORM: Written notice to employees shall be in the form of a notice included in each employee's paycheck, a notice sent certified mail to an employee's home if the employee is terminated or on leave or for another reason not receiving a paycheck, or such other method which provides actual written notice to each affected employee. A posted notice on a company bulletin board or verbal communication of rights under this section are not sufficient to meet this obligation to notify employees but may be used to supplement written notices to individual employees.

iii) CONTENT: Notice to employees must inform the employee of their rights under section 183. Each notice shall, at a minimum, contain a statement which includes: (a) The date of the transfer of control; (b) The earliest date at which a person may be eligible for severance benefits; (c) The latest date at which a person may be eligible for severance benefits; (d) An explanation of eligibility criteria, including but not limited to, method used to calculate three years of employment by the control transferor, and, the impact of a collective bargaining agreement, if any; (e) An explanation that an eligible employee shall receive two weeks pay per full year of service, in addition to any final wage payment, and the date upon which the payment will be made.

B. NOTICE TO COLLECTIVE BARGAINING REPRESENTATIVE: Written notice in the form of a certified letter, return receipt requested, which outlines employee rights under this section shall be provided the collective bargaining representative(s) within 30 days of the date of transfer of control.

C. NOTICE TO THE DEPARTMENT OF LABOR AND INDUSTRIES: Written notice in the form of a certified letter, return receipt requested, shall be provided the Massachusetts Department of Labor and Industries within 30 days of the date of transfer of control. This notice shall include the date of transfer of control; the name, address, and phone number of the

new owner; and a list of Massachusetts facilities affected by the transfer of control.

2. Failure to provide notice to employees, the collective bargaining representatives, and to the Department of Labor and Industries as required will subject a new owner to a fine of up to \$1000, to be determined by the Department of Labor and Industries.

II. EFFECTIVE DATE

1. Chapter 149, Sections 20E and 183, were signed into law by Governor Dukakis on July 18, 1989 as part of an omnibus Act Relative to Corporate Takeovers and the Competitiveness of the Massachusetts Economy. The legislation included an emergency preamble and took effect July 19, 1989.

2. Any person who, on or after July 19, 1989, acquired 50% or more of a controlling interest in a covered company, is subject to the requirement to provide severance benefits to eligible employees.

III. ELIGIBLE EMPLOYEES

1. In order to be eligible to collect severance benefits, an employee must:

A. Have been employed by a company that has had 50 or more full time employees at Massachusetts' facilities at any point within the last 12 months, or full and/or part time employees who work hours equivalent to 50 full time employees, and work for a business covered by this act; and,

B. Have been on active payroll at the time of transfer of 50% control, or whose employment was terminated within the shorter of the following periods prior to the control transfer: 1) Twelve calendar months; or (2) the period of time between which the control transferee obtained a five percent interest in the voting securities of the control transferor and consummated a control transfer by obtaining fifty percent or greater interest; or, any person whose employment is terminated within twenty four calendar months after the transfer of control;

(Any person who is on a leave of absence, workers compensation, disability, maternity or parental leave, vacation, or sick leave at the time of the transfer of 50% control is considered to be on the active payroll for the purpose of this law.) and,

C. Have been employed 3 years, full or part time, at the purchased company on the date of the transfer of 50% control; and,

D. Must not be included in any category listed in M.G.L. c. 151A, s. 25, which would disqualify them from receiving unemployment benefits.

IV. COLLECTIVE BARGAINING AGREEMENTS

1. Eligible employees must be paid severance benefits equal to two weeks pay for each full year of service at the time of termination, provided that they are not covered by a collective bargaining or other express contract in effect that provides for greater severance benefits.
2. The severance benefit mandated by the statute will not be added to the amount required by collective bargaining agreements. The requirement under this section will be satisfied provided a minimum of two weeks severance for each year of service is paid to eligible employees.
3. No collective bargaining agreement will operate to provide benefits less than those required by this law.
4. Payments received by the employee as unemployment compensation shall not be considered part of the required severance payment.

V. SEVERANCE BENEFIT AMOUNT

1. Severance benefits to eligible employees under Section 183 will be in the amount of two weeks pay for each full year of service. The years of service will be calculated from an employee's starting date, and will be calculated continuously, regardless of location of employment or changes in job category. Service will end on the effective date of termination.
2. Calculations for years of service will not include unpaid leaves of absence or layoffs, but will include sick time, maternity leave (as governed by M.G.L. c. 149 s. 105D), vacation time, periods on workers compensation, and periods where an employee was on active payroll.
3. For the purposes of this section, weekly pay is determined as the employee's weekly base compensation during the week just prior to the transfer of 50% control. If the week just prior to transfer of 50% control is not a regular week of work, then the last regular week of work shall be used as the basis for the benefit amount under this section. For an employee terminated prior to the date of transfer of 50% control, weekly compensation is based on the last regular payroll period just prior to his/her layoff. In cases where an eligible employee is on leave of absence or on workers compensation, weekly pay shall be determined based upon the last regular week of pay.

4. Payment must be made to an employee terminated following the transfer of 50% control within one payroll period following the layoff. Payment must be made to an employee terminated prior to the transfer of 50% control within four regular payroll periods after the date of transfer of 50% control.

DATE: 3/5/90

Policy Number 90 - CT - 01

James F. Snow
James F. Snow, Commissioner

